



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>**

September 24, 2003

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Gaspard, Vice-President
Neoplan USA Corporation
700 Gottlob Auwaerter Drive
Lamar, CO 81052-2298

Dear Mr. Gaspard:

Enclosed is an administrative complaint and notice of opportunity for hearing ("Complaint") for the assessment of civil penalties against Neoplan USA Corporation (Neoplan). The United States Environmental Protection Agency, Region 8 ("EPA"), is issuing this Complaint to Neoplan pursuant to Section 325(c) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. Specifically, the Complaint alleges that Neoplan is in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated at 40 CFR Part 372. Based on information gathered on July 23, 2002, pursuant to an EPCRA inspection conducted at Neoplan's facility and information subsequently submitted by the company, EPA's Complaint alleges 14 violations and proposes a penalty of \$284,075 be assessed for these violations.

As indicated in EPA's letter to Neoplan dated June 17, 2003, EPA hoped that additional information submitted by the company would help clarify or explain the violations identified and discussed at our meeting June 16, 2003. However, information submitted in letters from your contractor, Stewart Environmental Consultants, Inc., dated June 13 and July 21, 2003, explained some violations, it either verified or failed to refute others, or, in some instances, documented additional violations. This is reflected in the enclosed Complaint. EPA's letter also indicated that if significant progress is not made in explaining the violations, it would be necessary to file a formal complaint with proposed penalties. While your July 2003 letter indicated additional information would be forthcoming, EPA has received no new information regarding the indicated violations since that correspondence. Thus, EPA is now issuing the formal Complaint.

Neoplan has the right to request a hearing to contest the factual allegations in the Complaint or the appropriateness of the proposed penalty. Enclosed with the Complaint is a copy of the regulations at 40 C.F.R. Part 22, which are the procedures EPA follows in these civil administrative penalty assessments. **Pursuant to 40 C.F.R. § 22.15, if Neoplan wishes to**

contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of its receipt of the Complaint to the EPA Region VIII Hearing Clerk at the address provided in the Complaint. If Neoplan does not file an answer by the applicable deadline, pursuant to 40 C.F.R. § 22.15(a), it may be found in default in accordance with 40 C.F.R. §§ 22.17 and 22.27. A default judgment may impose the full penalty proposed in the Complaint.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (*see* 40 C.F.R. § 22.18.) Alternate dispute resolutions procedures are also available under 40 C.F.R. § 22.18. If a mutually satisfactory settlement can be reached, it will be formalized in a Consent Agreement. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. **Please note that arranging for a settlement meeting does not relieve Neoplan of the need to file a timely answer to EPA's Complaint.**

EPA will also consider incorporating a Supplemental Environmental Project (SEP) into any settlement agreement reached. Performance of an approved SEP involves actions going beyond the regulatory requirements to address other problems related to the violations, thereby creating a tangible improvement for the environment. As set forth in the SEP policy, performance of a SEP may mitigate a portion of the assessed penalty. A copy of EPA's final SEP policy, dated May 1, 1998, is enclosed. If you are interested in performing a SEP in connection with this settlement, EPA is willing to discuss the process for submitting a detailed proposal.

Finally, I also enclose information regarding the duty to disclose environmental legal proceedings which explains certain Securities and Exchange Commission regulations that may apply in relation to the enclosed complaint and subsequent proceedings. In addition, enclosed is a notice regarding the Small Business Regulatory Enforcement Fairness Act (SBREFA).

If you have any questions or wish to discuss settlement of this matter, please contact me at (303) 312-6912.

Sincerely,

SIGNED

James Stearns
Enforcement Attorney

Enclosures

cc. Cheryl Turcotte, ENF-T
David Stewart, Stewart Environmental Consultants, Inc.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

Docket No. EPCRA-08-2003-0001

In the Matter of:)	
)	
)	
Neoplan-USA-Corporation)	COMPLAINT AND NOTICE OF
700 Gottlob Auwaerter Dr)	OPPORTUNITY FOR HEARING
Lamar, CO 81052-2298)	
)	
Respondent.)	
)	

COMPLAINT

This Administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 325(c) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, as properly delegated to the undersigned EPA officials. Pursuant to section 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting; Community Right-To-Know Rule (the "Right-To-Know Rule"), 40 C.F.R. Part 372.

This administrative proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (the "Consolidated Rules", a copy of which is enclosed with the Complaint).

GENERAL ALLEGATIONS

- i. Respondent is Neoplan-USA-Corporation and is a corporation in good standing under the laws of the State of Colorado.

ii. Respondent is a "person" as this term is defined by section 329(7) of EPCRA,

42 U.S.C. § 11049(7).

iii. Respondent is an owner and operator of a manufacturing facility located at 700 Gottlob Auwaerter Dr., Lamar, Colorado 81052-2298 (the "Facility").

iv. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, require owners and operators of regulated or "covered" facilities to submit a completed toxic chemical release form known as EPA Form R (EPA Form 9350-1)(hereafter referred to as "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was known by the owner or operator to be manufactured, imported, processed, or otherwise used at its covered facility during the preceding calendar year in quantities exceeding the threshold amounts for reporting listed at 40 C.F.R. § 372.25.

v. Pursuant to 40 C.F.R. § 372.30(a), covered facilities are required to submit Form R in accordance with the instructions set forth in 40 C.F.R. § 372.85. Pursuant to 40 C.F.R. § 372.30(d), such forms are to be submitted annually to the Administrator of the EPA and to the State in which the subject facility is located, on or before July 1 of the year after the calendar year in which the manufacture, importing, processing, or other use of the chemical occurred.

- vi. Pursuant to Section 313(g)(1) of EPCRA, 42 U.S.C. § 11023(g)(1), and 40 C.F.R. § 372.85, for each toxic chemical subject to reporting requirements under 40 C.F.R. § 372.30, the submitted Form R is required to include, among other things, an accurate amount of the total releases for the toxic chemical covered, including air emissions, in pounds per year, based on reasonable estimates using data available to the preparer. In accordance with Section 313(g)(2) of EPCRA, 42 U.S.C. § 11023(g)(2), “the owner or operator of a facility may use readily available data . . . or . . . reasonable estimates of the amounts involved.”
- vii. “Toxic chemical” is defined at 40 C.F.R. § 372.3 to mean a chemical or chemical category listed in 40 C.F.R. § 372.65.
- viii. "Otherwise use" is defined at 40 C.F.R. § 372.3 to mean any use of a toxic chemical that is not covered by the terms "manufacture" or "process" and include use of a toxic chemical contained in a mixture or trade name product.
- ix. "Process" is defined at 40 C.F.R. § 372.3 to mean the preparation of a toxic chemical, after its manufacture, for distribution in commerce. “Manufacture” is defined at 40 C.F.R. § 372.3 to mean to produce, prepare, import, or compound a toxic chemical.
- x. Pursuant to Section 313(b)(1) of EPCRA, 42 U.S.C. § 11023(b)(1), and 40 C.F.R.

§§ 372.5 and 372.22, a facility that in any calendar year has (a) ten or more full-time employees, (b) is in Standard Industrial Classification (SIC) major group code 20-39, among other SIC categories, and (c) manufactured, processed, or otherwise used a toxic chemical in excess of the applicable threshold quantity for that chemical, as set forth in 40 C.F.R. § 372.25, is a “covered facility” for that calendar year and must report under 40 C.F.R. § 372.30.

- xi. Respondent's facility is in primary Standard Industrial Classification Code 3713 and thus is within the SIC major group code 37.
- xii. For all years relevant to this Complaint, Respondent’s facility has had 10 or more full-time employees, as that term is defined in 40 C.F.R. § 372.3.
- xiii. Styrene, Chemical Abstract Service Registry number 100-42-5, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if it is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25(b).
- xiv. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for styrene which was “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.
- xv. N-hexane, Chemical Abstract Service Registry number 110-54-3, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if it

is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25(b).

xvi. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for n-hexane which was “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.

xvii. Xylene (mixed isomers), Chemical Abstract Service Registry number 1330-20-7 (hereafter referred to as “xylene”), is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if it is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25(b).

xviii. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for xylene which was “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.

xix. Methyl ethyl ketone, Chemical Abstract Service Registry number 78-93-3, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if it is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R.

§ 372.25(b).

- xx. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for methyl ethyl ketone which was “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.
- xxi. Certain glycol ethers are a chemical category designated under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if they are manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25(b).
- xxii. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for certain glycol ethers which are “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.
- xxiii. Toluene, Chemical Abstract Service Registry number 108-88-3, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30, if it is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25(b).
- xxiv. Pursuant to 40 C.F.R. § 372.25(b), the appropriate reporting threshold for toluene which was “otherwise used” in all calendar years relevant to this Complaint is 10,000 pounds per year.
- xxv. The above allegations are all incorporated by reference as if fully set forth in the following counts.

COUNT I

xxvi. Styrene was otherwise used at Respondent's facility during the year 1998 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

xxvii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 1999, for the styrene it used at the Facility during the calendar year 1998.

xxviii. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 1999, for the styrene it used at the Facility during the calendar year 1998.

xxix. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT II

xxx. Styrene was otherwise used at Respondent's facility during the year 1999 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

xxxi. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2000, for the styrene it used at the Facility during the calendar year 1999.

xxxii. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2000, for the styrene it used at the Facility during the calendar year 1999.

xxxiii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT III

xxxiv. N-hexane was otherwise used at Respondent's facility during the year 1998 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

xxxv. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 1999, for the n-hexane it used at the Facility during the calendar year 1998.

xxxvi. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 1999, for the n-hexane it used at the Facility during the calendar year 1998.

xxxvii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT IV

xxxviii. N-hexane was otherwise used at Respondent's facility during the year 1999 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

xxxix. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2000, for the n-hexane it used at the Facility during the calendar year 1999.

xl. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2000, for the n-hexane it used at the Facility during the calendar year 1999.

xli. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT V

xlii. N-hexane was otherwise used at Respondent's facility during the year 2000 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

xliii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2001, in accordance with the instructions set forth in 40 C.F.R. § 372.85, for the n-hexane it used at the Facility during the calendar year 2000.

xliv. Respondent submitted a Form R to the Administrator on or before July 1, 2001, stating that the quantity of air emissions for n-hexane for the calendar year 2000 was 11,820 pounds, which is not an accurate and reasonable estimate for such emissions.

xlv. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. §§ 372.30 and 372.85.

COUNT VI

xlvi. Xylene was otherwise used at Respondent's facility during the year 1998 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

xlvii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 1999, for the xylene it used at the Facility during the calendar year 1998.

xlvi. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 1999, for the xylene it used at the Facility during the calendar year 1998.

xlix. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT VII

i. Xylene was otherwise used at Respondent's facility during the year 1999 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

ii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2000, for the xylene it used at the Facility during the calendar year 1999.

iii. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2000, for the xylene it used at the Facility during the calendar year 1999.

iiii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT VIII

liv. Xylene was otherwise used at Respondent's facility during the year 2001 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

lv. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2002, for the xylene it used at the Facility during the calendar year 2001.

lvi. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2002, for the xylene it used at the Facility during the calendar year 2001.

lvii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT IX

lviii. Methyl ethyl ketone was otherwise used at Respondent's facility during the year 1998 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

lix. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 1999, for the methyl ethyl ketone it used at the Facility during the calendar year 1998.

lx. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 1999, for the methyl ethyl ketone it used at the Facility during the calendar year 1998.

lxi. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT X

lxii. Methyl ethyl ketone was otherwise used at Respondent's facility during the year 1999 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

lxiii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2000, for the methyl ethyl ketone it used at the Facility during the calendar year 1999.

lxiv. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2000, for the methyl ethyl ketone it used at the Facility during the calendar year 1999.

lxv. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT XI

lxvi. Certain glycol ethers were otherwise used at Respondent's facility during the year 2000 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R. § 372.25(b).

lxvii. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2001, for the glycol ethers it used at the Facility during the calendar year 2000.

lxviii. Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1, 2001, for the glycol ethers it used at the Facility during the calendar year 2000.

lxix. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. § 372.30.

COUNT XII

lxx. Toluene was otherwise used at Respondent's facility during the year 1998 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

lxxi. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 1999, for the toluene it used at the Facility during the calendar year 1998.

lxxii. Respondent submitted a Form R to the Administrator on or before July 1, 1999, stating that the quantity of air emissions for toluene for the calendar year 1998 was zero (0) pounds, which is not an accurate and reasonable estimate for such emissions.

lxxiii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. §§ 372.30 and 372.85.

COUNT XIII

lxxiv. Toluene was otherwise used at Respondent's facility during the year 1999 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

lxxv. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2000, for the toluene it used at the Facility during the calendar year 1999.

lxxvi. Respondent submitted a Form R to the Administrator on or before July 1, 2000, stating that the quantity of air emissions for toluene for the

calendar year 1999 was zero (0) pounds, which is not an accurate and reasonable estimate for such emissions.

lxxvii. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. §§ 372.30 and 372.85.

COUNT XIV

lxxviii. Toluene was otherwise used at Respondent's facility during the year 2000 in excess of the threshold amount for that chemical, 10,000 pounds, as set forth in 40 C.F.R.

§ 372.25(b).

lxxix. Respondent's facility is "covered" under 40 C.F.R. § 372.22 and, pursuant to

40 C.F.R. § 372.30, Respondent was required to submit an EPA Form R to the Administrator and the State of Colorado on or before July 1, 2001, for the toluene it used at the Facility during the calendar year 2000.

lxxx. Respondent submitted a Form R to the Administrator on or before July 1, 2001, stating that the quantity of air emissions for toluene for calendar year 2000 was 16,451 pounds, which is not an accurate and reasonable estimate for such emissions.

lxxxi. Respondent's actions, described above, constitute one violation of section 313 of EPCRA and 40 C.F.R. §§ 372.30 and 372.85.

PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended, authorizes EPA to assess an administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000) per day of violation of each violation of Section 313 of EPCRA occurring before January 31, 1997, and up to Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day of violation for each violation occurring on or after that date.

For purposes of determining the amount of any civil penalty to be assessed, Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), requires EPA to take into account for Class II penalties and violations of EPCRA Section 313, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice requires.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, as known at this time, with specific reference to and in accordance with the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992, (enclosed as Complainant's Exhibit #1). This policy provides a rational, consistent and equitable calculation method for applying the statutory factors listed above to particular cases.

Based on the statutory factors and the facts and circumstances of this case, Complainant proposes that Respondent be assessed a total penalty of **\$284,075**, pursuant to the authority of Section 325 of EPCRA, 42 U.S.C. § 11045, as set forth below:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PROPOSED PENALTY</u>
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I	Failure to submit Form R for styrene otherwise used in 1998	\$23,375
II	Failure to submit Form R for styrene otherwise used in 1999	\$23,375
III	Failure to submit Form R for n-hexane otherwise used in 1998	\$23,375
IV	Failure to submit Form R for n-hexane otherwise used in 1999	\$23,375
V	Failure to submit accurate Form R for n-hexane otherwise used in 2000	\$13,750
VI	Failure to submit Form R for xylene otherwise used in 1998	\$23,375
VII	Failure to submit Form R for xylene otherwise used in 1999	\$23,375
VIII	Failure to submit Form R for xylene otherwise used in 2001	\$18,700
IX	Failure to submit Form R for methyl ethyl ketone otherwise used in 1998	\$23,375
X	Failure to submit Form R for methyl ethyl ketone otherwise used in 1999	\$23,375
XI	Failure to submit Form R for certain glycol ethers otherwise used in 2000	\$23,375

XII	Failure to submit accurate Form R for toluene otherwise used in 1998	\$13,750
XIII	Failure to submit accurate Form R for toluene otherwise used in 1999	\$13,750
XIV	Failure to submit accurate Form R for toluene otherwise used in 2000	\$13,750
TOTAL		\$284,075

The reasoning behind the proposed penalty in this matter is detailed in the penalty calculation narrative and worksheet, incorporated herein by reference and enclosed as Complainant's Exhibit #2.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with the Consolidated Rules, Respondent may request a formal hearing before an Administrative Law Judge to contest any material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer must contain: (1) a statement of the facts which constitute grounds for a defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) whether a hearing is requested. The denial of any material fact or

the raising of an affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered admitted.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN 30 CALENDAR DAYS OF RECEIPT OF THIS COMPLAINT, SUCH FAILURE SHALL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THIS COMPLAINT AND WAIVER OF THE RIGHT TO HEARING. IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT. FAILURE TO ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE TIME LIMITS WILL RESULT IN THE FILING OF A MOTION FOR DEFAULT ORDER AND THE POSSIBLE ISSUANCE OF A DEFAULT ORDER IMPOSING THE PENALTIES PROPOSED IN THIS COMPLAINT.

The Answer must be sent to:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 - 18th Street, Suite 500
Denver, Colorado 80202-2466.

A copy of the Answer and all other documents which you file in this action must be sent directly to the EPA attorney of record identified below.

Respondent is advised that the Consolidated Rules prohibit any ex parte (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of informal conferences. Therefore, whether or not a hearing is requested, Respondent may confer informally with the Agency concerning (1) whether the alleged violation in fact occurred as set forth above, or (2) the propriety of the proposed penalty in relation to the size of its operation, the gravity of the violation and the effect of the proposed penalty on its ability to continue in business. **THE REQUEST FOR AN INFORMAL CONFERENCE DOES NOT EXTEND THE PERIOD FOR FILING AN ANSWER AND REQUESTING A HEARING AS SET OUT ABOVE.** The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

To explore the possibility of settlement in this matter or if you have questions, please contact the EPA attorney of record identified below.

QUICK RESOLUTION: PAYMENT OF PENALTY

If Respondent does not contest the findings and proposed penalty assessment set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. A copy of the check must be filed with the Regional Hearing Clerk. For more time for payment, Respondent must file a statement with the Regional Hearing Clerk at the address below within 30 days of receipt of the Complaint agreeing to pay the proposed penalty

pursuant to 40 C.F.R. § 22.18(a), then must pay the penalty in full within 60 days of receipt of the Complaint. The statement filed need not contain any response to, or admission of, the allegations in the Complaint. Payment of the penalty shall be made by cashier's or certified check, in the amount of **\$284,075.00** payable to the "Treasurer, United States of America", identifying Respondent's name and the Docket Number of this action and mailed to:

U.S. EPA, Region 8
Mellon Bank (Regional Hearing Clerk)
P.O. Box 360859
Pittsburgh, PA 15251-6859

A copy of the check shall be mailed simultaneously to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Cheryl Turcotte (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466.

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of 40 C.F.R. Part 372 and any other environmental statutes and regulations. If you choose to remit the proposed penalty pursuant to these quick resolution procedures, you are still under a legal duty to submit proof of compliance for all counts in this Complaint. Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the penalty and a waiver of the Respondent's right to a hearing on this matter.

**In the Matter of:
Neoplan-USA-Corporation
Docket No. EPCRA-08-2003-0001**

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
Complainant.

Date: 9/23/03

By: David J. Janik
Michael T. Risner
Director
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/23/03

By: SIGNED
Martin Hestmark
Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9-23-02

By: SIGNED
James M. Stearns
Enforcement Attorney
U.S. EPA, Region VIII
999 18th Street
Suite 500 (8ENF-L)
Denver, Colorado 80202-2466
Telephone: (303) 312-6912
Facsimile: (303) 312-6953

**In the Matter of:
Neoplan-USA-Corporation
Docket No. EPCRA-08-2003-0001**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA- Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail, return receipt requested, to:

James Gaspard
Vice-President
Neoplan-USA-Corporation
700 Gottlob Auwaerter Drive
Lamar, CO 81052

and

National Registered Agents, Inc.
Registered Agent for Neoplan-USA-Corp.
1535 Grant
Suite 140
Denver, CO 80203

9/24/03

Date

SIGNED

Judith M. McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 23, 2003.